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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

BROOKLYN OFFICE

-----X
EDWIN FERNANDEZ,

Plaintiff,

- against -

VICKY TURETSKY, et al.,

Defendants.

-----X
MEMORANDUM & ORDER

12-cv-4092 (SLT) (MDG)

TOWNES, United States District Judge,

Plaintiff Edwin Fernandez, proceeding *pro se*, alleges that his constitutional right to due process was violated by (1) federal defendants: Vicki Turetsky and Joyce A. Thomas, respectively, the Commissioner and Regional Administrator of the U.S. Department of Health and Human Services, Office of Child Support Enforcement; (2) state defendants: Thomas H. Mattox and C. Duncan Kerr, respectively, the Commissioner and Deputy Tax Commissioner of the New York State Department of Taxation and Finance, Office of Child Support Enforcement; and three Tax Compliance Agents employed by the New York State Department of Taxation and Finance, Child Support Enforcement Section – Patty Whitford, Georgia Brown, and Margaret Ramsay; and (3) a municipal defendant: Robert Doar, a former Commissioner of the New York City Human Resources Administration. Plaintiff alleges that his vehicles and funds were seized, wages garnished, and tax refunds intercepted in order to collect child support arrears even though “Plaintiff was in compliance paying child support arrears.” [Dkt. 4, Amd. Compl. ¶ 26.] This action was reassigned to this Court on March 18, 2014, after Judge Mauskopf entered a recusal order on March 17, 2014. Currently before the Court is state defendants’ (“Defendants”) motion to dismiss for, *inter alia*, lack of subject matter jurisdiction.¹

¹ Defendants also seeks to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure on the grounds that Plaintiff’s claims are time-barred. This Court need not reach the issue because it lacks subject matter jurisdiction over the case.

Legal Standard

Defendants move to dismiss on the grounds that this Court lacks subject matter jurisdiction. *Remy v. New York State Dep't of Taxation & Fin.*, 507 F. App'x 16, 18 (2d Cir. 2013) (“A challenge under the *Rooker–Feldman* doctrine is for lack of subject matter jurisdiction.”) (quoting *Moccio v. N.Y. State Office of Court Admin.*, 95 F.3d 195, 198 (2d Cir. 1996)). “A case may properly be dismissed for lack of subject matter jurisdiction pursuant to Rule 12(b)(1) ‘when the district court lacks the statutory or constitutional power to adjudicate it.’” *Sobel v. Prudenti*, 12 CV 3258 DRH WDW, 2014 WL 2750364, at *10 (E.D.N.Y. June 18, 2014) (quoting *Makarova v. United States*, 201 F.3d 110, 113 (2d Cir. 2000)). Unlike on a motion to dismiss for failure to state a claim under Rule 12(b)(6), a “plaintiff asserting subject matter jurisdiction has the burden of proving by a preponderance of the evidence that it exists.”” *Mac Pherson v. State St. Bank & Trust Co.*, 452 F. Supp. 2d 133, 136 (E.D.N.Y. 2006) *aff'd*, 273 F. App'x 61 (2008) (quoting *Makarova*, 201 F.3d at 113). In resolving a motion to dismiss under Rule 12(b)(1), the Court is not limited to the face of the complaint, but may also consider evidence such as affidavits submitted by the parties. *Robinson v. Government of Malaysia*, 269 F.3d 133, 141 (2d Cir. 2001).

Factual History

According to the factual recitation in the May 13, 2008 Decision and Order of the Honorable Francois A. Rivera, Justice of the Supreme Court of the State of New York, Kings County dismissing Plaintiff's CPLR Article 78 petition, Plaintiff's obligation to pay child support to his ex-wife, custodial parent of their child, arises out of a June 7, 1990 divorce decree. After Plaintiff did not comply with his child support obligations, in June 1999, his ex-wife requested that the New York City Support Collection Unit assist her in enforcing Plaintiff's

support obligations. Justice Rivera's May 13, 2008 Order finds that although the child support order was terminated *nunc pro tunc* to January 9, 2007, the day that the subject child turned 21 Plaintiff still owed outstanding support arrears. Subsequently, a Supreme Court of the State of New York, Kings County Family Court Support Magistrate, at an October 23, 2007 hearing, set Plaintiff's child support arrears at \$33,468.80. Justice Rivera's Order rejects Plaintiff's contention "that he has paid the required child support and now that the child is emancipated, he no longer owes any money," because "[i]n actuality, though Mr. Fernandez's [sic] paid child support through an income execution of his wages, and the child in question is now emancipated, *he is still in arrears for prior child support payments that he never paid.*" (emphasis added).

Accordingly, Justice Rivera dismissed Plaintiff's CPLR Article 78 petition.

Plaintiff filed the instant lawsuit pursuant to 42 U.S.C. § 1983 against employees of federal, state, and municipal child support enforcement agencies alleging that, because his ongoing support obligations were terminated *nunc pro tunc* to January 9, 2007 when his child turned 21, he had no further support obligations and all subsequent child support collection efforts were unconstitutional.² In his papers, Plaintiff challenges the October 23, 2007 decision of a Family Court Support Magistrate setting Plaintiff's child support arrears at \$33,468.80. Although he does not mention his unsuccessful CPLR Article 78 petition in his pleadings, he, in effect, asks this Court to reconsider Justice Rivera's May 13, 2008 Order finding that Plaintiff owed money under a valid child support arrears decree. Defendants have moved to dismiss Plaintiff's action for, *inter alia*, lack of subject matter jurisdiction based on the domestic relations exception to federal jurisdiction and the *Rooker-Feldman* doctrine.

² *Pro se* complaints "must be construed liberally and interpreted to raise the strongest arguments that they suggest." *Triestman v. Fed. Bureau of Prisons*, 470 F.3d 471, 474 (2d Cir. 2006) (internal quotation marks omitted).

Discussion

A. *Domestic Relations Exception to Jurisdiction*

Defendants contend that this Court lacks subject matter jurisdiction over the action under the domestic relations exception to federal court jurisdiction. *See Ankenbrandt v. Richards*, 504 U.S. 689, 703 (1992). The so-called “domestic relations exception” dates back to 1858, when the Supreme Court announced that federal courts have no jurisdiction over suits for divorce or the allowance of alimony. *Barber v. Barber*, 62 U.S. 582, 584 (1858); *Ankenbrandt*, 504 U.S. at 703 (explaining that exception “divests the federal courts of power to issue divorce, alimony, and child custody decrees.”) Although courts frequently use broad language when characterizing the exception, the Supreme Court has clarified that, in actuality, the exception is narrow, and “encompasses *only* cases involving the issuance of a divorce, alimony, or child custody decree.” *Ankenbrandt*, 504 U.S. at 704 (emphasis added). Thus, where a lawsuit “in no way seeks such a decree,” the exception’s invocation is inappropriate. *Id.*; *Williams v. Lambert*, 46 F.3d 1275, 1283 (2d Cir. 1995) (“[T]he exception is very narrow.”); *but see McKnight v. Middleton*, 699 F. Supp. 2d 507, 516-17 (E.D.N.Y. 2010) *aff’d*, 434 F. App’x 32 (2d Cir. 2011) (observing that in *Schottel v. Kutyba*, 06-1577-CV, 2009 WL 230106 (2d Cir. Feb. 2, 2009), the Second Circuit expanded the exception to claims that, in fact, challenge domestic relations decrees, even where they are recast as actions seeking monetary relief).

The domestic relations exception is rooted in an understanding that “[t]he whole subject of the domestic relations of husband and wife, parent and child, belongs to the laws of the states, and not to the laws of the United States.” *In re Burrus*, 136 U.S. 586, 593–94 (1890). “[T]he exception is grounded, not in the Constitution, but as a matter of ‘statutory construction’ of the federal diversity statute.” *Tilley v. Anixter Inc.*, 283 F. Supp. 2d 729, 733-34 (D. Conn. 2003)

(citing *Ankenbrandt*, 504 U.S. at 703). Despite its origins in the federal diversity statute, courts in this district routinely apply the exception to cases brought under the federal courts' federal question jurisdiction. *See Mitchell-Angel v. Cronin*, 101 F.3d 108 (2d Cir. 1996) ("District courts in this Circuit have held that the exception includes civil rights actions directed at challenging the results of domestic relations proceedings.") (citing *McArthur v. Bell*, 788 F.Supp. 706, 708 (E.D.N.Y. 1992)); *see also Sobel*, 2014 WL 2750364, at *11 (finding exception strips federal court of jurisdiction where "Plaintiff's complaint is, in effect, a civil rights action directed at challenging the results of domestic relations proceedings, and, in particular, a state court's decisions regarding child support."); *Sullivan v. Xu*, No. 10-CV-3626 (ENV), 2010 WL 3238979, at *2 (E.D.N.Y. Aug. 13, 2010) ("Although plaintiff invokes his constitutional rights, the substance of his claims concern state law domestic relations matters."). That said, the Second Circuit recently noted in a summary order that the Circuit "expressly decline[s] to address whether the domestic relations exception to federal subject matter jurisdiction applies to federal question actions." *See Ashmore v. Prus*, 12-2760-CV, 2013 WL 362998, at *2 (2d Cir. Jan. 31, 2013) (summary order); *see also Ahlawat v. State of Connecticut Superior Court*, 3:12-CV-1042 JBA, 2013 WL 3338572, at *1 n.2 (D. Conn. July 2, 2013) (noting that "the Second Circuit has not resolved whether [the domestic relations] exception would provide a further bar to Plaintiff's federal question lawsuit.").

Here, if Plaintiff's claim is read to challenge the enforcement of a child support decree on the grounds it is erroneous, his lawsuit, even though framed as a civil rights action, would be barred by the domestic relations exception. However, reading *pro se* Plaintiff's complaint to "raise the strongest arguments that they suggest," *Triestman*, 470 F.3d at 474, Plaintiff's complaint can be read more narrowly – to seek monetary damages for violations of his due

process rights that occurred during the enforcement of a *valid* child support decree.

Ankenbrandt, 504 U.S. at 704 (noting that the exception has no application where the lawsuit “in no way seeks [a domestic relation] decree”). Even so, some courts in this district have held that lawsuits seeking monetary relief for purportedly unlawful conduct undertaken to enforce valid support decrees are also barred by the domestic relations exception. *See Joseph v. Stewart*, 13-CV-1678 NGG LB, 2013 WL 3863915, at *2 (E.D.N.Y. July 24, 2013) (applying domestic relations exception where “Plaintiff challenges the enforcement and effect of his child support obligations, and although he invokes his constitutional rights, the essence of his allegations concern state law domestic relations matters.”).³ This Court need not resolve whether such a narrow challenge would be barred by the domestic relations exception because the Court lacks subject matter jurisdiction over this action under, *inter alia*,⁴ the *Rooker-Feldman* doctrine.

B. Rooker-Feldman Doctrine

The so-called *Rooker-Feldman* doctrine divests federal courts of jurisdiction to consider suits which seek to overturn state court judgments. *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005). Additionally, the doctrine “bars federal courts from

³ *But see King v. Comm'r & New York City Police Dep't*, 60 F. App'x 873, 874-75 (2d Cir. 2003) (summary order) (“The instant appeal is brought pursuant to the court’s federal question jurisdiction, not its diversity jurisdiction. Nevertheless, the City argues that the domestic relations exception is not limited to diversity cases. Although this seems contrary to precedent, the city does cite language to support its argument. We need not examine this question, however, because even under the broadest interpretation of the exception, it applies only to cases that seek issuance or modification of divorce, alimony, or child custody decrees. Appellant is not seeking a domestic relations award, and he is not asking that his parental rights be reinstated. Instead, his complaint seeks monetary damages. The domestic relations exception to federal jurisdiction is therefore irrelevant to this action.”) (citation and parenthetical explanation omitted).

⁴ Even if this Court has jurisdiction, “[a] federal court presented with matrimonial issues or issues ‘on the verge’ of being matrimonial in nature should abstain from exercising jurisdiction so long as there is no obstacle to their full and fair determination in state courts.” *Am. Airlines, Inc. v. Block*, 905 F.2d 12, 14 (2d Cir. 1990).

considering claims that are ‘inextricably intertwined’ with a prior state court determination.”

Johnson v. Smithsonian Inst., 189 F.3d 180, 185 (2d Cir. 1999) (citations and internal quotation marks omitted). In *Exxon Mobil*, the Supreme Court reined in the use of the doctrine, explaining that the doctrine “is confined to cases … brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments.” *Id.* In the wake of *Exxon Mobil*, the Second Circuit revisited its prior precedents and limited the application of *Rooker-Feldman* to cases satisfying four “requirements”:

First, the federal-court plaintiff must have lost in state court. Second, the plaintiff must “complain[] of injuries caused by [a] state-court judgment[.]” Third, the plaintiff must “invit[e] district court review and rejection of [that] judgment[].” Fourth, the state-court judgment must have been “rendered before the district court proceedings commenced”—i.e., *Rooker-Feldman* has no application to federal-court suits proceeding in parallel with ongoing state-court litigation. The first and fourth of these requirements may be loosely termed procedural; the second and third may be termed substantive.

Hoblock v. Albany Cnty. Bd. of Elections, 422 F.3d 77, 85 (2d Cir. 2005) (quoting *Exxon Mobil*, 544 U.S. at 284); *see also McKithen v. Brown*, 626 F.3d 143, 154 (2d Cir. 2010).

Courts have repeatedly invoked the doctrine in cases, like the one currently before the Court, in which plaintiffs challenge family court decrees setting child support arrears. *See Sorenson v. Suffolk Cnty. Child Support Enforcement Bureau*, 07-CV-03755JFBKT, 2009 WL 580426, at *6-7 (E.D.N.Y. Mar. 5, 2009) (finding plaintiff, who previously unsuccessfully sought to have child support “arrears vacated … in state court” cannot “utilize the federal courts to, in essence, challenge the existing judgment regarding child support arrears, or the County’s enforcement of that judgment.”); *Remy*, 507 F. App’x at 18-19 (finding that court was barred under *Rooker-Felton* from exercising jurisdiction over suit challenging “Family Court’s arrears order[, where plaintiff] … had a full and fair opportunity to litigate [the arrears order in state

court].”); *Chestnut v. Gabler*, No. 06 Civ. 34E(F), 2007 WL 529556, at *3 (W.D.N.Y. Feb.13, 2007) (“Construed liberally, the complaint essentially alleges that plaintiff’s constitutional rights were violated during the course of the Family Court proceedings and plaintiff now seeks, in part, to challenge in this Court the orders issued in those proceedings. To the extent plaintiff is asking this Court to review the proceedings before the Allegany County Family Court, said review by this Court is barred by the *Rooker–Feldman* doctrine and the complaint must be dismissed accordingly.”). In *Sorenson*, the Court explained that although the plaintiff attempted to recast his claims as alleging “improper enforcement of the Family Court judgment rather than [challenging] the judgment itself[,] … *Rooker–Feldman* also bars such claims because the enforcement is inextricably intertwined with the state court judgment.” *Sorenson*, 2009 WL 580426, at *7 (collecting cases).

Plaintiff expressly asks this Court to review the October 23, 2007 family court order setting arrears on the grounds that the decision was erroneous because he had complied with all previous child support obligations and thus could not be liable for arrears. Under the *Rooker–Feldman* doctrine, this Court may not do so. As in *Sorenson*, to the extent Plaintiff recasts his claims as alleging improper enforcement of the child support arrears decree, under these circumstances, the enforcement of the arrears decree is inextricably intertwined with the validity of the decree, itself. Thus this Court is barred under the *Rooker–Feldman* doctrine from reviewing the claim. Additionally, this Court is precluded from reviewing Plaintiff’s claims for the separate reason that Plaintiff has already brought an Article 78 petition in state court raising these exact arguments. Thus, the instant lawsuit, in effect, challenges not only the October 23, 2007 arrears order, but also the May 13, 2008 decision of Justice Rivera dismissing the Article

78 petition. Plaintiff's attempts to appeal to this Court the decisions of the Family Court Support Magistrate and Justice Rivera are barred by the *Rooker-Feldman* doctrine. Accordingly, Defendant's motion to dismiss is granted.

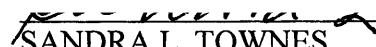
The above reasoning applies with equal force to Plaintiff's claims against the other defendants who allegedly enforced the child support arrears decree. Thus, this Court lacks subject matter jurisdiction to adjudicate Plaintiff's claims against all of the remaining defendants in the action. Given that this Court has determined that it lacks subject matter jurisdiction over the entire action, the Court, *sua sponte*, dismisses Plaintiff's claims against the remaining defendants and dismisses Plaintiff's complaint in its entirety. *Morris v. Rosen*, 12-3143-CV, -- F. App'x ---, 2014 WL 4233392, at *1 (2d Cir. Aug. 28, 2014) (affirming district court's *sua sponte* dismissal of *pro se* plaintiff's complaint for lack of subject matter jurisdiction under the *Rooker-Feldman* doctrine.)

Conclusion

For the foregoing reasons, the State Defendant's motion to dismiss is granted on the grounds that this Court lacks subject matter jurisdiction over the instant action under the *Rooker-Feldman* doctrine. For the same reasons, the Court *sua sponte* dismisses the action against all other defendants. The Clerk of Court is respectfully directed to enter judgment accordingly and close the case.

SO ORDERED

/s/ Sandra L. Townes


SANDRA L. TOWNES
United States District Judge

Dated: Brooklyn, New York

November 5, 2014